

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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JOSEPH FERLITO and ANGELO
FERLITO,

-against-

THE COUNTY OF SUFFOLK, and P.O.
CHRISTIAN HUBERT; and P.O.
MICHAEL S. TURANSKY; and
STEVEN A. LEVY a/k/a STEVE LEVY

Defendants.
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ORDER

Civil Action No. 06-5708
(DRH)(AKT)

APPEARANCES:

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Woodmere, NY 11598-1452

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Suffolk County Attorney
Attorney for Defendants
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By: Susan A. Flynn, Esq.

HURLEY, Senior District Judge:

Plaintiffs, Joseph Ferlito and Angelo Ferlito (collectively "Plaintiffs"), commenced this asserting claims pursuant to 28 U.S.C. § 1983, as well as New York state law. By Memorandum and Order dated November 19, 2007, this Court granted in part and denied in part Defendants' motion to dismiss. Presently before this Court is Plaintiffs' Application for Entry of Default, filed on December 6, 2007. The application is denied.

Pursuant to Federal Rule of Civil Procedure 12(a)(4)(A) Defendants' answer was due

to be served within ten days of this Court's decision of the motion to dismiss. Calculated pursuant to Rule 6 of the Federal Rules of Civil Procedure, the answer was due on December 4, 2007. It was actually filed on December 7, 2006, the day after the instant application was made. Because defaults are not favored and because the defendants have appeared and indicated a desire to contest the action and the failure to file the answer on or before December 4, 2007 was due to inadvertence, the Court exercises its discretion and denies the application for a default. *See generally* Wright and Miller, 10A *Federal Practice and Procedure* § 2682 at 18.

SO ORDERED.

Dated: Central Islip, New York
January 29, 2008

/s/ _____
Denis R. Hurley
Senior District Judge